IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 7307 of 2004

Narayan Lal Bairwa ..Petitioner

vs.

1. Industrial Development Bank
of India and others ..Respondents

Shri R.L.Nerlekar for petitioner
Shri C.U.Singh i/b M/s Pamnani and Pamnani & Co.
for respondent no.1.
Shri R.C.Master for respondent no.2.

CORAM: A.P.SHAH AND
S.C.DHARMADHIKARI JJ
4th NOVEMBER, 2004

P.C.

1. We have heard the learned Counsel appearing for the parties. Perused the affidavit of Deputy General Manager of I.D.B.I.

2. It is settled position of law that as far as promotions to Grade B and Grade C are concerned, there is no reservation in favour of scheduled caste/scheduled tribe but they are entitled to the concessions contained in para 2 of the Office Memorandum (OM) dated 26th March, 1970 issued by the Ministry of Home Affairs. This OM has been interpreted by the Supreme Court in the case of National Federation of S.B.I. and others Vs.

Union of India and others; (1995) 3 SCC 532. The Court has explained the meaning and nature of concessions contained in the memorandum as follows:

> We may now turn to the meaning and nature of the 'concession' contained in the Office Memorandum dated 26.3.1970. We have already set out the significant features of the said concession contained in para 2 of Office Memorandum in para 5 of this judgment. We shall now explain what exactly does the formula mentioned under (c) in para 5 of our judgment mean? For the sake of convenience, we shall repeat the formula.
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> "In promotions by selection to posts within Class I...the Scheduled Caste/Scheduled Tribes officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up would be included in the list provided they are not considered unfit for promotion."
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> It is necessary to reiterate that the said Office Memorandum does not provide for reservation as contemplated by Article 16(4)

of the Constitution of India; it only provides for a concession which the state can always provide under Article 16 as explained in Indra Sawhney Vs.Union of India. The concession is evidently designed and intended to help the Scheduled Caste/Scheduled Tribes officers obtain promotions which they may not otherwise get. Towards that purpose, it is provided that those Scheduled Castes/Scheduled Tribes Officers who are senior enough in the zone of consideration so as to be within the number of vacancies available shall be included in the select list provided they are not considered unfit for promotion. The said formula has been explained with reference to an illustration in the letter dated 7.11.1983, referred to above. Be that as it may, we shall elaborate and explain it. Take a case where twenty vacancies arise which have to be filled by promotion by selection, according to the relevant rules, thrice the number of vacancies are to be considered - in other words, a list of sixty eligible candidates has to be prepared who alone will be considered for promotion to the said twenty post, which list is but

another name for "the zone of consideration" referred to in the Office Memorandum; (ordinarily, this list is prepared on the basis of senisority-cum-eligibility); if any Scheduled Caste/Scheduled Tribes officers happen to fall within Serial Nos.1 to 20 in the said list, they shall be included in the select list without further ado, i.e. without subjecting them to the process of selection and without comparing their merit and grading with the merit and grading of the other officers within the zone of consideration. But for the said concession, it may be noted, these Scheduled Caste/Scheduled Tribes officers may not get selected even though they may fall within Serial Nos. 1 to 20 in the zone of consideration for the reason that the candidates below Serial No.20 may have a better record of service and grading than them. Since the promotion is on the basis of selection, the more meritorious (the officer having better grading) will get selected notwithstanding his position in the zone of consideration. It appears quite obvious that candidates belonging to Scheduled Caste/Scheduled Tribes were not

getting selected by following the normal procedure of selection and hence, the said concession was provided. According to it, kit is enough if a Scheduled Caste/Casted Tribes candidate comes within Serial Nos. 1 to 20 in he zone of consideration in the illustration given above. He would be automatically included in the select list, even though his grading on the basis of his record and performance may be far inferior to the grading of the other officers below Serial No. 20 in the zone of consideration provided, ofcourse, such Scheduled Castes'/Scheduled Tribes' officer is not found unfit for promotion.So far as Scheduled Castes/Scheduled Tribes candidates below Serial No.20 in the zone of consideration are concerned, they will, ofcourse, be not entitled to any such concession and, therefore,d have to be compete with other candidates within the zone of consideration. It is equally clear that the OC candidates between Serial Nos. 1 to 20 in the zone of consideration will not be entitled to the aforesaid concession; they will have to compete with all others in the zone of consideration (S.Nos. 1 to 60)

for selection to the said vacancies. This, in short, is the concession. Since it is only a concession and not a reservation, the several letters of the Ministry of Finance referred to above, viz. letters dated 30.5.1981, 7.11.1983, 25.3.1987 and the clarificatory Office Memorandum dated 1.11.1990 repeatedly say that while there is no reservation for Scheduled Caste and Scheduled Tribes in this behalf (i.e. in the matter of promotion by selection to posts; within Class I) a concession is provided to them. It is because of this circumstance again that para 9.2 in the 7th Edn. of the Brochure on the subject of reservation for Scheduled Caste and Scheduled Tribes in services says that while there is no reservation, the Scheduled Caste/Scheduled Tribes candidates are entitled to the concession mentioned therein."

3. The respondents have averred in their affidavit that for the purpose of extending the concessions to the Scheduled Caste/Scheduled Tribes, respondent no.1 has used the rating system for determining the

fitness for promotions in the case of promotions to Middle Management Grade Scale III i.e. upto Grade C. This rating is based on two parameters, the Performance Appraisal Rating (PAR)l which is summarized from the annual reports of the officer for the last 5 years, and marks obtained in an interview. The assignment of marks for the PAR rating is done by the reporting and reviewing officer of the concerned officer and interview marks are given by the Selection Committee, based on the performance of the Officer(s) in the interview, which as stated above includes a senior SC/ST officer. An officer is deemed to be "unfit for promotion" if the officer scores less than 2.01 out of 5.1 marks in the interview, or less than 2.50 out of 5 marks in the average PAR ratings for the last five years, or less than 5.52 marks in the aggregate out of 10 marks. This system of rating as above, as well as in the minimum marks in individual heads in the aggregate, are uniformly applicable to all eligible officers, whether belonging to the SC/ST or not. However, even here a further concession in the form of grace marks in the marks obtained in an interview is given by the Respondent No.1 to its SC/ST officers.

4. The respondents have also produced before us a

chart to show that adequate representation is being given to the scheduled caste and scheduled tribes in the promotional posts. The petitioner's case was considered by respondent no.1 for promotion first in 1995, 1996 and thereafter except for the years 1998-99 and 1999-2000. However, the petitioner was found unfit by different selection committees for promotion to Grade C. It is also pointed out to us that this Committee included Senior ST/SC officer. In the above circumstances, it is not possible to grant any relief to the petitioner. Petition is accordingly disposed of.